UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA ASHEVILLE DIVISION

WHY DRIVE 55, INC.,) Civil Action) No:1:11-cy-297
Plaintiff,) 100.1.11-64-297
v.)) MOTION FOR
BONNIE DUNCAN, et al., Jointly and Severally,) MOTION FOR) DEFAULT JUDGMENT)
Defendants.)
)
)
	,

NOW COMES Plaintiff, by and through its undersigned counsel pursuant to Rule 55(b)(1) of the Federal Rules of Civil Procedure, and respectfully requests and moves that the Clerk enter default judgment against Defendant Edd Conn, and respectfully shows the Court as follows:

- 1. The Clerk entered the Default of Defendant Edd Conn [Doc. 91] into the record on March 22, 2013, based on those Defendants' failure to answer the Second Amended Complaint or file any responsive pleading thereto, and based on Plaintiff's counsel's Declaration in support of that motion.
- 2. Plaintiff's President and Owner, Michael Selverne, has executed an Affidavit in support of this Motion, which is attached as Exhibit 1, and incorporated into this Motion.
 - 3. The Plaintiff moves this Court for a Default Judgment against Defendant Edd Conn in

the amount of \$450,000.00, plus interest as allowed by law, based on the allegations against

Defendant Edd Conn as contained in Count I (Fraud), Count III (Aiding and Abetting Fraud), Count

V (Conversion), Count VI, (Trespass De Bonis Asportatis), Count VII (Unjust Enrichment), Count

VIII (Replevin). The Plaintiff waives any attorney's fees and prejudgment interest not provided for

by contract or statute, punitive or treble damages, and any other non-sum certain damages which it

may otherwise recover from Defendant Edd Conn for these allegations. The amount of Plaintiff's

damages as detailed in the Complaint and attached Affidavit of Michael Selverne, and due Plaintiff

from Edd Conn, is a sum certain of \$450,000.00.

4. The undersigned has submitted and attached a Declaration in support of this motion.

WHEREFORE, Plaintiff, Why Drive 55, Inc. prays that the Clerk enter a Default Judgment in

Plaintiff's favor against each of the Defendant Edd Conn, in the sum certain amount of \$450,000.00,

plus interest as a allowed by law.

This, the 24th day of February, 2014.

s/ Sean D. Soboleski,

NC Bar Number: 27620

Attorney for Plaintiff, Why Drive 55, Inc.

Soboleski Law, PC

900 Hendersonville Road, Suite 302

Asheville, NC 28803

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UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA ASHEVILLE DIVISION

WHY DRIVE 55, INC.,)
Plaintiff,)
v.) Civil Action
	No:1:11-cv-297
BONNIE DUNCAN, et. al.,)
Jointly and Severally,)
•) DECLARATION IN
Defendants.) SUPPORT OF MOTION
) FOR DEFAULT
) JUDGMENT
)
)

Sean D. Soboleski, hereby declares and affirms as follows:

- 1. I am an attorney with Soboleski Law, PC, and I am counsel for Plaintiff in this action.
- That default was entered against defendant Edd Conn in this matter on March 22nd
 2013 [Doc. 91].
- 3. That all claims against defendants Bonnie Duncan, Joseph W. Duncan, Dove Air, Inc., Robert Hettinger, and Alyssa Duncan were dismissed by stipulation [**Doc. 106**] on February 7th, 2014, and the only remaining defendant in the action is Edd Conn.
- 4. That Plaintiff, Why Drive 55, Inc. has applied for a default judgment against defendant Edd Conn on counts One, Three, Five, Six, Seven, and Eight of its Second Amended Complaint.
- 5. That the undersigned has not received any response from Edd Conn, by letter or otherwise, to plaintiff's Second Amended Complaint.
- 6. That the Affidavit of Michael Selverne and the Complaint show a sum certain owed

to Plaintiff in the amount of \$450,000.00.

7. That Defendant Edd Conn, upon information and belief, is not a minor, nor an incompetent person.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge.

This, the 24th day of February, 2014.

s/ Sean D. Soboleski, NC Bar Number: 27620 Attorney for Plaintiff, Why Drive 55, Inc. Soboleski Law, PC 900 Hendersonville Road, Suite 302 Asheville, NC 28803 Telephone: (828) 285-8888

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UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA ASHEVILLE DIVISION

WHY DRIVE 55, INC.,)
Plaintiff,)
v.) Civil Action
) No:1:11-cv-297
BONNIE DUNCAN, et. al.,)
Jointly and Severally,) <u>CERTIFICATE OF</u>
) <u>SERVICE</u>
Defendants.)
)
)
)

The undersigned certifies to the Court that Plaintiff's Motion for Default Judgment, Affidavit of Michael Selverne, and Declaration of Sean D. Soboleski, were this day served upon the parties of record to this action electronically through the ECF system at their email addresses below, pursuant to Rule 5 of the Federal Rules of Civil Procedure, for counsel who are registered through the ECF system. Defendant Edd Conn will be served this day by regular mail at the address below.

Nick Rocknich, III: nick@nrpropertylaw.com,

Attorney for Bonnie Duncan, Joseph Duncan, Alyssa Duncan, Robert Hettinger, and DoveAir, Inc.,

Edd Conn

614 SE 12 Avenue, Deerfield Beach, FL 33441.

This, the 24th day of February, 2014.

s/ Sean D. Soboleski, Bar Number: 27620

Attorney for Plaintiff, Why Drive 55, Inc.

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